

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DEREK E. GRONQUIST,

Plaintiff,

v.

FAYE NICHOLAS, HEATHER ANNIS, CC3  
PAUL PEMBERTON, STEVE BLAKEMAN,  
KAREN BRUNSON, HAROLD CLARKE,  
STATE RAMSEY, RICHARD MORGAN,  
STEVE TOOHEY, JOHN DOES I, II AND III  
CLALLAM BAY CORRECTIONS CENTER  
OFFICERS, DEPARTMENT OF  
CORRECTIONS, and STATE OF  
WASHINGTON,

Defendants.

No. C10-5374 RBL/KLS

ORDER GRANTING RULE 56(F)  
MOTION AND DENYING MOTIONS  
FOR EXTENSION AS MOOT

Before the court are Plaintiff's motions to extend the discovery deadline (ECF No. 22), to extend his deadline for responding to Defendants' pending summary judgment motion (ECF No. 27); and to stay the summary judgment motion pursuant to Rule 56(f) (ECF No. 28 (Motion) and ECF No. 29 (Declaration)). Defendants oppose the motions. ECF Nos. 25 and 31. Also before the court is Defendants' motion to re-note their summary judgment motion until March 25, 2011

ORDER- 1

1 (ECF No. 33) and Plaintiff's Supplement Declaration in support of his motion to stay. ECF No.  
2 35.

3 Having carefully reviewed the motions, opposition, and balance of the record, the court  
4 finds that Plaintiff's Rule 56(f) motion has merit and that a continuance of Defendants' summary  
5 judgment motion pending additional discovery is warranted. In light of this finding, Plaintiff's  
6 remaining motions are moot.  
7

### 8 **DISCUSSION**

9 Plaintiff filed his lawsuit in Thurston County Superior Court, alleging that Defendants  
10 violated his Eighth Amendment rights by failing to prevent an assault on him by his fellow  
11 inmate. ECF No. 1. Defendants removed the case to this court on May 25, 2010. *Id.* On June  
12 4, 2010, Plaintiff filed a motion to remand. ECF No. 9. That motion was denied. ECF No. 13.  
13 On August 2, 2010, the court issued a Pretrial Scheduling Order setting the discovery deadline  
14 for January 28, 2011. ECF No. 14. Defendants filed their motion for summary judgment on  
15 December 23, 2010. ECF No. 18. The summary judgment motion was noted for January 21,  
16 2010. *Id.*  
17

18 Plaintiff has engaged in very limited discovery. According to Defendants, Plaintiff  
19 served his First Interrogatories on them in June 2010 and they submitted their answers in July  
20 2010. ECF No. 26, Exh. E. Plaintiff has written defendants' counsel on three separate occasions  
21 complaining that Defendants' answers were unresponsive. *Id.*, Exh. F. In response, counsel for  
22 Defendants has written to Plaintiff on three separate occasions asking him to identify which  
23 answers he considered to be unresponsive. *Id.*, Exh. G. Plaintiff has failed to identify the  
24 offending answers.  
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1 Plaintiff served his Second Interrogatories and Requests for Production upon the  
2 defendants on November 24, 2010. *Id.*, Exh. H. Defendants answered those discovery requests  
3 on January 6, 2011. *Id.*, Exh. I. Plaintiff did not contact Defendants' counsel with regard to  
4 Defendants' answers to his latest discovery requests. Instead, on January 5, 2011, Plaintiff filed  
5 the motion requesting a 120 extension of the discovery deadline. ECF No. 22. In the motion to  
6 re-note their summary judgment motion, Defendants advise that the parties have now conferred  
7 and Defendants' counsel has agreed to provide Plaintiff with supplemental answers to some of  
8 the discovery requests.  
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10 Plaintiff bases his requests for continuance and extension of the discovery deadline, in  
11 part, on the restrictive nature of his confinement, limited access to the law library and  
12 photocopies, the complexity of the issues he is required to brief, and Defendants refusal to  
13 respond to his discovery requests. As noted above, however, the parties appear to be at an  
14 impasse in resolving their discovery dispute. Plaintiff also claims that he will have to file  
15 motions to compel and for leave to amend his complaint. *See, e.g.* ECF No. 23, pp. 3-4. The  
16 court need not address these issues as in his Rule 56(e) motion, Plaintiff outlines several areas of  
17 fact-finding that are essential before he is able to resist the Defendants' summary judgment  
18 motion.  
19

20 Rule 56(f) of the Federal Rules of Civil Procedure provides:

21 If a party opposing the motion [for summary judgment] shows by affidavit that,  
22 for specified reasons, it cannot present facts essential to justify its opposition, the  
23 court may:

24 (1) deny the motion;

25 (2) order a continuance to enable affidavits to be obtained, depositions to be  
26 taken, or other discovery to be undertaken; or

1 (3) issue any other just order.

2 A party seeking a continuance under Rule 56(f) must demonstrate that there are specific  
3 facts he hopes to discover if granted a continuance that will raise a genuine issue of material fact.  
4 *Harris v. Duty Free Shoppers Ltd. Partnership*, 940 F.2d 1272, 1276 (9th Cir.1991); *Carpenter*  
5 *v. Universal Star Shipping, S.A.*, 924 F.2d 1539, 1547 (9th Cir.1991). “The burden is on the  
6 party seeking to conduct additional discovery to put forth sufficient facts to show that the  
7 evidence sought exists.” *Volk v. D.A. Davidson & Co.*, 816 F.2d 1406, 1416 (9th Cir.1987). *See*  
8 *also Tatum v. City and County of San Francisco*, 441 F.3d 1090, 1100 (9th Cir.2006); *California*  
9 *v. Campbell*, 138 F.3d 772, 779 (9th Cir. 1998) (party opposing on Rule 56(f) grounds needs to  
10 state the specific facts he hopes to elicit from further discovery, that the facts sought exist and  
11 that the sought-after facts are essential to resisting the summary judgment motion); *Hancock v.*  
12 *Montgomery Ward Long Term Disability Trust*, 787 F.2d 1302, 1306 n. 1 (9th Cir.1986) (holding  
13 that the party opposing summary judgment “has the burden under Rule 56(f) to show what facts  
14 he hopes to discover to raise an issue of material fact”).<sup>1</sup>

17 In his Rule 56(f) motion, Plaintiff details several facts that he hopes to discover. For  
18 example, he states that he needs to obtain the video surveillance recordings for CBCC’s C-Unit  
19 for June 17, 2007. Plaintiff alleges that he was in his cell sleeping on that morning when another  
20 inmate, Dennis Florer, entered his cell and assaulted him. He claims that he repeatedly pushed  
21 the button next to his door. This button acts as an emergency call system when the door has been  
22 dead-locked by the booth officer and unlocks the door when the booth officer has placed the cells  
23 on “local.” ECF No. 29, pp. 1-2. No officer responded and his door did not open. Plaintiff

25 <sup>1</sup> Of course, pro se pleadings are to be construed liberally. *See Estelle v. Gamble*, 429 U.S. 97, 106, 97 S. Ct. 285,  
26 50 L.Ed.2d 251 (1976) (pro se complaints, “however inartfully pleaded,” must be held to “less stringent standards  
than formal pleadings drafted by lawyers”).

1 kicked his cell door and another inmate in the pod came to the cell door to ask if he wanted out  
2 of his cell. Plaintiff told him yes, it is an emergency. During this time, Florer continued his  
3 assault on Plaintiff, including slamming his head into the window and door of his cell. The other  
4 inmate from the pod waved at the booth officer to alert her, but no officer responded. *Id.*, p. 2.  
5 Florer's assault on Plaintiff continued for approximately 15 minutes while Florer slammed him  
6 against the wall and steel door, punched, kicked and bit him. *Id.*; ECF No. 1-2, p. 9. Plaintiff  
7 suffered a fractured skull, concussion, lacerations, bruising, abrasions, injuries to his neck, face  
8 and shoulder, psychological trauma and mental anguish. ECF No. 1-2, p. 9. Plaintiff alleges  
9 that Defendant Nicholas ignored Plaintiff's cries for help, emergency call light, and distress calls  
10 from other inmates. *Id.*

12 In support of their summary judgment motion, Defendants submit the declaration of Faye  
13 Nicholas in which she states that she believes that Plaintiff allowed inmate Florer to access his  
14 cell by pushing the button located inside his cell after she had placed the cell door on "local."  
15 ECF No. 20, pp. 2-3. Plaintiff disputes this, claiming that if his cell door had been on "local", he  
16 would have been able to escape from his cell. Defendant Annis states that she was at her post in  
17 the doorway of the Unit Duty Station during the time of the assault. ECF No. 21, p. 22. Plaintiff  
18 states that when he was finally allowed out of his cell, Ms. Annis was facing away from the  
19 inmate areas on the telephone, eating a sandwich. ECF No. 29, p. 3. In addition, Plaintiff states  
20 that if she were in the doorway as she claimed, this raises the question of why she would have  
21 allowed inmate Florer into his pod. ECF No. 29, p. 4. Plaintiff claims that the video  
22 surveillance recordings for CBCC's C-Unit, including the control booth, duty station, foyer and  
23 pod, will enable him to present evidence that Defendants Nicholas and Annis granted inmate  
24 Florer access to his pod and cell and refused to render aid in response to Plaintiff's repeated calls  
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1 for help. Plaintiff requested the production of the surveillance tapes, along with all documents  
2 and photographs pertaining to the June 17, 2007 incident. ECF No. 29, p. 25. In their response,  
3 Defendants stated: "See Attachment A." ECF No. 32, p. 41. However, it is unknown to the  
4 court what was produced.

5 Plaintiff also states that he needs to discover the identity and location of the inmate who  
6 alerted Ms. Nicholas to the assault and obtain a declaration or deposition regarding his conduct  
7 and observations during the morning of June 17, 2007. In support of his claim that Defendants  
8 placed him at risk of harm, Plaintiff also seeks, *inter alia*, to discover information relating to  
9 training, supervision and qualifications of the corrections officers; obtain statements from  
10 witnesses to conduct relating to a large money judgment that Plaintiff alleges placed him at risk  
11 from inmate Florer; obtain information relating to Defendants' knowledge of inmate Florer's  
12 history, custody level, supervision requirements and history of violence; discover the identity of  
13 three John Doe Defendants to whom Plaintiff stated that his safety was at risk; to discover what  
14 steps Defendants Brunson and Pemberton took after Plaintiff requested to be transferred out of  
15 the CBCC; to obtain the grievances and letters Plaintiff filed with CBCC relating to Defendant  
16 Pemberton's hostile conduct; and to obtain evidence of similar lawsuits wherein the levels of  
17 violence and inadequate security at CBCC placed inmates at risk. Plaintiff also seeks to discover  
18 the nature of CBCC's electronic detention control system as he has obtained evidence that the  
19 system was old, in disrepair, and not meant for close custody. *See* ECF No. 29, p. 42 (letter in  
20 2007 from the Secretary of the DOC declaring a state of emergency to expedite the design,  
21 purchase and construction of a new hardware system because the electronic detention control  
22 system posed a real and immediate threat to ensure safety and security).  
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1 Much of the information sought by Plaintiff could potentially support his version of the  
2 facts and his theory that his safety was placed at risk by the conduct or inaction of the various  
3 defendants. For example, if the surveillance video is produced and/or if a declaration can be  
4 obtained from the inmate who witnessed the assault and attempted to gain the attention of the  
5 booth officer, it may be proven that Plaintiff did not voluntarily admit inmate Florer into his cell,  
6 thus creating a material issue of fact as to whether Defendants knowingly placed Plaintiff in  
7 harm's way. Information relating to Plaintiff's past grievances, requests for transfer, and inmate  
8 Florer's history, may also be crucial in opposing Defendants' summary judgment motion as this  
9 type of evidence could support Plaintiff's theory that Defendants knew of a risk to his safety by  
10 Dennis Florer but disregarded it.

12 In an abundance of caution and in light of Plaintiff's pro se status and restrictive  
13 confinement, the court will grant Plaintiff additional time to pursue this additional discovery and  
14 will extend the discovery deadline until **April 29, 2011**. The court will strike the noting date of  
15 Defendants' motion for summary judgment and Defendants may renew their motion after  
16 expiration of the new discovery deadline date by filing and serving a motion that simply  
17 incorporates by reference all evidence and arguments submitted in connection with the motion  
18 for summary judgment now pending before the court or by filing a completely new motion.  
19 Upon Defendants' renewal of their motion for summary judgment, Plaintiff shall timely file his  
20 opposition. Plaintiff will not be granted any additional time for this purpose absent a compelling  
21 showing of good cause.

24 To facilitate discovery efforts, the court anticipates that the parties will continue to  
25 cooperate in good faith to resolve any discovery disputes. If the parties cannot amicably resolve  
26 their issues, Plaintiff may file a motion to compel, and shall include a certification stating that

1 their efforts were unsuccessful, and shall identify those areas of disagreement that remain  
2 unresolved.

3 In light of the continuance granted herein, the court need not address Plaintiff's requests  
4 for additional time (ECF Nos. 22 and 27) and they are **DENIED as moot**.

5 Accordingly, it is **ORDERED**:

6 (1) Plaintiff's Motion to Stay (ECF No. 28) is **GRANTED**; the discovery deadline is  
7 extended until **April 29, 2011** and the Clerk shall **strike** the noting date of Defendants' motion  
8 for summary judgment (ECF No. 18). Defendants' motion to re-note (ECF No. 33) is **DENIED**  
9 **as moot**.

10 (2) At the expiration of the new discovery deadline of April 29, 2011, Defendants  
11 may either file an amended motion for summary judgment including a new brief and supporting  
12 documents, or simply renew their motion by filing a notice of such renewal incorporating by  
13 reference all arguments and evidence submitted in connection with their motion for summary  
14 judgment filed on December 23, 2010.

15 (3) Plaintiff's Motion for 120-Day Extension (ECF No. 22) and Motion for  
16 Enlargement of Time (ECF No. 27) are **DENIED as moot**.

17 (4) The Clerk shall send copies of this Order to Plaintiff and to counsel for  
18 Defendants.

19 **DATED** this 3rd day of February, 2011.

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25 Karen L. Strombom  
26 United States Magistrate Judge